IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4219 of 2001

with

SPECIAL CIVIL APPLICATION NO. 5191 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA NANDLAL PARIKH

Versus

COMMISSIONER OF POLICE

&

DEVENDRAPRASAD BHAGVANJI PANDYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4219 of 2001
MR YOGESH S LAKHANI for Petitioner
MR ARUN OZA, GOVERNMENT PLEADER for Respondents No. 1-3

2. Special Civil Application No. 5191 of 2001
MR PS CHAMPANERI, for petitioner
MR ARUN OZA, GOVERNMENT PLEADER for Respondents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/12/2001

COMMON ORAL JUDGEMENT

The petitioners herein are detained by an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers under Section 3, sub-section (2) of The Gujarat Prevention of Anti-social Activities Act, 1985 (for short "PASA Act"), by order dated May 7, 2001. The order was executed on that very day.

2. Petitioner in Special Civil Application No. 4219/2001 was the Chairman of Madhavpura Mercantile Co-operative Bank Ltd. (for short "MMCB"), who has been allegedly involved in activities which are detrimental to the public order and therefore, he is branded as a dangerous person by the Detaining Authority in the grounds of detention. The grounds of detention indicate that during his Chairmanship, number of irregularities were committed and illegal economic transactions were carried out by the MMCB in breach of the Rules of the Reserve Bank of India, which resulted into closure of Bank because of it's inability to return the money of the depositors. The detenu is booked for offences punishable under Sections 405, 406, 408, 409, 420, 468, 471 read with 120B of IPC and Sections 18, 24 and 35(A) of Banking Regulations Act, which is registered with Madhavpura Police Station at C.R No. I-0067/2001 on 21.4.2001, which is pending investigation. The petitioner was arrested on May 1, 2001. When the order of detention came to be executed on May 7, 2001, the petitioner was in judicial custody.

2.1 The detaining authority after considering various documents and statements of various witnesses, came to a conclusion that the activities of the detenu are detrimental to public order; that the applicant has misused his position and has resorted money of thousands of Bank depositors while acting in conspiracy with his associates. The detaining authority has then recorded a satisfaction about the detenu being a dangerous person. The detaining authority recorded a satisfaction that the detenu is required to be prevented from pursuing his illegal activities immediately. The authority considered the possibility of resorting to externment proceedings

and of cancellation of bail. The authority observed that the detenu is in judicial custody, but he may apply for bail at any point of time and on getting bail, may furnish surety and get himself enlarged on bail and thereafter may pursue his illegal and anti-social activity. The authority observed that it considered the possibility of resorting to the remedy of cancellation of bail after the detenu getting bailed out, but it is not possible to resort to the remedy as it may consume more time and that the detenu is required to be prevented from pursuing the activities immediately and accordingly the detention order was passed.

3. The detenu/petitioner challenges the order of detention by this petition under Article 226 and Articles 21 and 22 of the Constitution of India on various grounds. The learned Advocate Mr. Lakhani appearing for the petitioner submitted that he may be permitted to place on record a communication received by the detenu from the detaining authority dated 17.5.2001, rejecting the representation made by the detenue on 13th May, 2001. Permission is granted. Copy of that communication is taken on record. Learned Advocate appearing for the petitioner submitted that the order of detention suffers from various defects. He submitted that a close reading of the grounds of detention would indicate a clear non-application of mind on the part of the detaining authority. He submitted that the detaining authority has considered factors which are not relevant and has not considered factors which are relevant and therefore the order of detention would get vitiated. According to Mr. Lakhani, the continued detention of the detenu would get vitiated on account of rejection of representation made by the detenu to the detaining authority after the date of approval of the detention by the Government.

4. Mr. Lakhani raised following contentions:-

(a) The petitioner detenu is branded as a dangerous person;

(b) The subjective satisfaction recorded by the detaining authority is without any basis;

(c) Excepting the solitary offence registered against the detenu, no other offence is registered and no other unregistered offence is indicated or considered by the detaining authority;

(d) Lack of plurality in commission of offences by the detenu would result in adversely affecting

the subjective satisfaction of the detaining authority that the petitioner is a dangerous person;

(e) For branding a person as a dangerous person it has to be shown that he falls within the definition of dangerous person as defined under the PASA Act, which requires that he must be habitually involved in commission of such offences and term "habitually" necessarily means that there is an element of repetitiveness in commission of crime.

Mr. Lakhani therefore, submitted that the order is bad in law on this count.

5. Mr. Lakhani submitted that the order is without application of mind for the following reasons:-

(a) The detaining authority has observed that the detenu is likely to pursue his illegal and anti-social activities if he is not immediately detained;

(b) The authority has over-looked the fact that the detenu was much earlier removed from his office and an administrator was appointed. The subjective satisfication that the detenu is likely to continue his illegal activities if he is not immediately prevented, is therefore, without any basis;

(c) There is nothing to indicate that the detenu will be able to assume the office from which he is removed or that he may acquire such office in some other Bank and continue with the activities which are alleged to have been committed by him. The subjective satisfaction that the detenue is required to be immediately detained to prevent him from pursuing his illegal activities is therefore without any basis;

(d) The detaining authority has observed that the detenu is likely to apply for bail, get an order of bail, furnish surety and get himself bailed out and thereafter the authority considered the possibility of resorting to cancellation of bail under Sec. 437(5) of Cr.P.C and observed that it is not possible to resort to that remedy as it may consume more time.

6. Mr. Lakhani submitted that the satisfaction is based on a hypothesis. The detenu was in judicial custody and had not applied for bail. The possibility of his applying for bail visualised by the detaining authority is without any basis and then the detenu getting bail is also without any basis. Mr. Lakhani therefore placed reliance on the decision in case of Amritlal and ors. Vs. Union Government through Secretary, Ministry of Finance and others, as reported in 2000 AIR SCW 4203 and submitted that likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed.

7. Mr. Lakhani submitted that there is gross delay in considering the representation made by the detenu by the Government and communication of the decision of the Government to the detenu. He has relied on the affidavits-in-reply filed by the detaining authority as well as the Government. He reiterated that the representation of the detenu has been turned down by the detaining authority after he became functus-officio and the Government approved the order of detention. Mr. Lakhani therefore submitted that the petition may be allowed and order of detention may be quashed and set aside.

8. The petitioner in Special Civil Application No. 5191/2001 was the Managing Director of MMCB. He also came to be detained by an order passed on 7.5.2001 by the Commissioner of Police, Ahmedabad City, Ahmedabad. The grounds of detention are identical as that of the earlier detenu. He has also been branded as a dangerous person involved in illegal and anti-social activities detrimental to the maintenance of public order.

9. Learned Advocate Mr. Champaneri appearing for the petitioner submitted that he adopts the arguments advanced by learned Advocate Mr. Lakhani and relies on the same as the grounds of petition are the same.

9.1 Mr. Champaneri submitted that the facts of both the cases are similar except that when this petitioner was detained, he was under Police remand. He was arrested on 26.4.2001. He was remanded to Police custody upto 2nd May, 2001 and again thereafter he was remanded to Police custody upto 8.5.2001 and before that time expires, the order of detention was passed on 7.4.2001. Mr. Champaneri therefore urged that the case of the present petitioner would be on a better footing than the earlier petitioner.

9.2 As regards representation, Mr. Champaneri submitted that the detenu had sent two representations dated 14.5.2001, one was addressed to the detaining authority, whereas the other was addressed to the State Government. The State Government has not given consideration to the representation made to the detaining authority although the same was forwarded by the detaining authority to the State Government as the detaining authority has become functus officio on 15.5.2001. He submitted therefore that this has infringed the right of the detenu of making an effective representation guaranteed by the Constitution of India and his continued detention therefore would be vitiated.

10. Both the petitions are opposed by learned GP Mr. Arun Oza. According to Mr. Oza, it is not repetitiveness of the commission of crime, but the magnitude of the activity which has to be considered while branding a person as a dangerous person. To support his contention he has placed reliance on the decision of the apex Court in Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat & ors., as reported in JT 1999 (4) S.C 455.

10.1 As regards the contention on consideration of availability of less drastic remedy in form of seeking cancellation of bail, Mr. Oza placed reliance on the decision of this Court rendered in Koli Bharatbhai Ukabhai Vegad Vs. District Magistrate, as reported in 2001 (2) GLR 1587 and submitted that cancellation of bail cannot be considered as a less drastic remedy and is not required to be considered. Mr. Oza urged that the petitioners have, in a scheming manner duped thousands of depositors and have flagrantly violated the Regulations framed by the Reserve Bank of India, which brought a jolt to the economy of the State. He submitted that the petitioners ignored the provision of maintaining cash credit deposit ratio, which caused the Bank a closure and the economy was disturbed. Many depositors had to stand in queue at various Branches of MMCB and public order was greatly disturbed. Even persons who were not depositors were also disturbed and therefore, these petitions may not be entertained.

10.2 As regards delay in considering the representation, Mr. Oza had no answer to the contention that detaining authority rejected representation after the date of approval when it had become functus officio. As regards the delay in considering representations, it is contented that the representations have been forwarded

immediately by the detaining authority and the files were quickly processed. It was contended that the record was voluminous and therefore it took time in processing the file. The delay cannot be considered as an inordinate delay which is said to have been affected the right of the detenu of an effective representation. Here Mr. Oza had no answer to the delay caused in communication of decision to the detenu about rejection. The decision was taken by the Government on 22.5.2001 and it was despatched on 28.5.2001 through jail authority and the same was communicated by the authorities to the detenu on 2.6.2001. The affidavits-in-reply do not explain the delay between 22.5.2001 and 28.5.2001 and as such learned GP could not explain the delay.

11. Considering the contentions raised before this Court in light of the various legal propositions settled by various pronouncements, it appears that the petitioner's case in Special Civil Application No. 4219/2001 can be accepted solely on the ground of denial of considertion of a representation made by him. It is clear from the communication dated 17.5.2001 addressed to the petitioner by the detaining authority that a representation was received by the detaining authority through jail authorities dated 13.5.2001, which was received by the detaining authority on 16.5.2001. The representation was considered on merits and was rejected by the detaining authority by the said communication. It is not in dispute that the order of detention was approved by the State Government on 15.5.2001. As such after the order was approved by the State Government, the detaining authority became functus-officio and could not have considered the representation, nor could have rejected the same. The detaining authority on receipt of the representation on 16.5.2001, was required to forward the same to the State Government for consideration. However, the detaining authority has rejected the representation which has infringed the right of the detenu of making an effective representation. The continued detention of the detenu therefore would stand vitiated.

12. Apart from the above aspect, it requires to be noted that the grounds of detention clearly indicate that the detenu has been branded as a `dangerous person'. A dangerous person is defined under the PASA Act at Sec. 2(c), which reads as under:-

" 2(c) `dangerous person' means a person who either by himself or as a member or leader of a gang habitually commits, or atempts to commit or

abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code (XLV of 1860) or any of the offences punishable under Chapter V of the Arms Act, 1959 (54 of 1959)."

It is therefore expected that for being branded as a dangerous person it has to be indicated that the person either by himself or as a member or leader of a gang habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or XVII of the IPC or any of the offences punishable under Chapter V of the Arms Act, 1959. In the instant case the grounds of detention indicate involvement of the petitioner only in one offence registered against him vide CR No.I- 67/2001 with Madhavpura Police Station. This is the only offence which is considered by the detaining authority. His involvement is not indicated either by any other offence registered against him or by any un-registered offence. The element of multiplicity or repetitiveness of commission of offence is therefore absent.

12.1 Learned GP placed reliance on the decision in the case of Amanulla Khan Kudeatalia Khan Pathan Vs. State of Gujarat, reported in JT 1999 (4) SC 455. In that case only one offence was registered against the detenu and therefore it was contended that the detenu could not have been branded as a "dangerous person" as he cannot be considered to have been involved habitually in commission of offence. Their Lordships observed that apart from the registered offence, there are certain statements of witnesses which involved the detenu in certain offences and therefore it cannot be considered a case of solitary incident and the test of repetitiveness and continuity of activity was fully satisfied and therefore the satisfaction of the detaining authority holding that the detenu to be dangerous person was held to be not vitiated. Their Lordships observed "the expression "habitually" would obviously mean repeatedly or persistently. It supplies the threat of continuity of the activities and, therefore, as urged by the learned Counsel for the petitioner an isolated act would not justify an inference of habitually commission of the activity".

12.2 In this regard the decision of the apex Court in the case of Vijay Narain Singh Vs. State of Bihar and ors., reported in AIR 1984 SC 1334 is relevant. While considering the definition of "anti-social element" as defined in the Bihar Control of Crimes Act, 1981, which

is worded almost identical as "dangerous person" in the PASA Act, Their Lordships observed that the expression "habitually" means "repeatedly" or "persistently", it implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions.

13. It is therefore clear that in the instant case excepting the offence registered with Madhavpura Police Station, there is no other offence considered or relied upon by the detaining authority while branding the detenu as a dangerous person. The element of repetitiveness as envisaged in the definition of "dangerous person" and as defined by the apex Court in the above judgement is missing. The satisfaction of the detaining authority about the detenu being a dangerous person therefore would stand vitiated, which would vitiate the entire order and consequent detention.

14. It also requires to be noted that the detaining authority has observed that the detenu if not immediately detained, is likely to continue his illegal and anti-social activities detrimental to the maintenance of public order. The activities which are allegedly committed by the detenu are relating to banking activities such as non-observation of the directives of the Reserve Bank of India, non-maintenance of cash reserve ratio and thereby affecting the interest of the depositors, and on this basis the detaining authority came to a conclusion that resorting to other remedies under general law is not possible and the detenue are required to be detained. It has to be noted that when the order of detention was passed, both the detenu were in custody. One under judicial custody and the other under Police custody. Apart from this, as is clear from the grounds of detention, both the detenu were removed from their respective offices and administrator was appointed, who had already taken over the charge weeks' before the order of detention i.e. on 19th March, 2001. It is not explained as to on what basis a satisfaction is recorded by the detaining authority that immediate detention is necessary to prevent the detenue from continuing their activities. How the detenu could have continued their activities when they were in custody or how they could have continued their activity when they were not in the office or the possibility of their continuing the activities through other institutions is

not indicated. There is total absence of any material for recording a satisfaction that the petitioners were required to be immediately detained in order that they may be prevented from continuing their illegal and anti-social activities. The order of detention therefore is bad in law.

15. At this stage learned Advocate for the petitioners do not press for a verdict on other contentions raised on them.

16. For the foregoing reasons the orders of detention challenged in these petitions are found to be vitiated. The detention also stands vitiated. Likewise, the continued detention would also stand vitiated in respect of petitioner in Special Civil Application No. 4219/2001 and therefore the petitions deserve to be allowed.

The petitions are allowed. The orders of detention passed by the Commissioner of Police, Ahmedabad City on 7.5.2001 in respect of the petitioners - (1) Rameshchandra Nandlal Parikh and (2) Devendraprasad Bhagvanji Pandya are quashed and set aside. Both the detenu be set at liberty forthwith if they are not required in any other case. Rule made absolute. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas